

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERNEST HARPER,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 2:14-cv-11630-LJM-EAS
Honorable Laurie J. Michelson
Magistrate Judge Elizabeth A. Stafford

**OPINION AND ORDER OVERRULING DEFENDANT'S OBJECTIONS [22],
ADOPTING REPORT AND RECOMMENDATION [20], AND GRANTING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [16]**

Plaintiff Ernest Harper suffers from a number of physical and mental impairments including degenerative disc disease and protruding discs in his lumbar spine. In September 2011, Harper applied for disability benefits and supplemental security income from the Social Security Administration, asserting that his impairments prevented him from working full time. An administrative law judge acting on behalf of the Commissioner of Social Security disagreed. After Harper unsuccessfully attempted to administratively appeal that decision, he filed this lawsuit against the Commissioner. Harper and the Commissioner have each moved for summary judgment: Harper seeks a remand for an award of benefits, the Commissioner an affirmance of the ALJ's decision. (*See* Dkts. 16, 18.)

Pursuant to this District's Local Rules, the two motions were referred to Magistrate Judge Elizabeth A. Stafford for a report and recommendation. In her report, the magistrate judge makes two findings: (1) that the record evidence clearly demonstrates that Harper meets Listing 1.04 and thus is presumptively disabled and entitled to benefits and (2) the ALJ's residual functional capacity assessment of Harper (i.e., that Harper could perform a limited range of "light" work)

lacks substantial evidentiary support. (*See* Dkt. 20, Report & Recommendation at 8–18.) She recommends a remand for an award of benefits.

The Commissioner objects. (Dkt. 22, Def.’s Objs.) Although the Commissioner takes no issue with the magistrate judge’s finding that the ALJ’s residual functional capacity assessment was error, she contests the magistrate judge’s conclusion that Harper meets Listing 1.04. (*See id.* at 1–2.) In particular, the Commissioner points out that Listing 1.04A requires “evidence of nerve root compression” and argues that “Judge Stafford’s analysis specifically fails because the record contains no clear evidence of the requisite nerve root compression. Indeed, Judge Stafford cites no place in the record where any doctor diagnosed or assessed, or any objective medical findings documented, any nerve root compression.” (Def.’s Objs. at 4.)

The Commissioner is wrong. At page nine of her report and recommendation, the magistrate judge wrote,

the ALJ mentioned in her opinion that Harper’s August 2012 MRI ‘revealed two protruded discs,’ but not the further finding from that MRI of a L5-S1 disc herniation that ‘*was compromising on the exiting nerve.*’ [R. 12-2, Tr. 28; R. 12-8, Tr. 518, 521].

(Report and Recommendation at 9 (emphases added).) And “Tr. 518” refers to an MRI report that says, “There are minor disk bulges in the upper 2 disks and the L5-S1 disk shows *a right paracentral disk herniation that is compromising on the existing nerve.*” (Emphasis added.) So, upon a de novo review of the portion of the report the Commissioner complains of, *see* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(3), the Court agrees with the magistrate judge.

As for the remainder of her report and recommendation, this Court is under no obligation to question its reasoning or findings when the Commissioner has elected not to. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *Garrison v. Equifax Info. Servs., LLC*, No. 10-cv-13990, 2012 WL 1278044, at *8 (E.D. Mich. Apr. 16, 2012).

Accordingly, the Court ADOPTS the findings of the report and recommendation (Dkt. 20) as the findings of this Court, GRANTS Harper's motion for summary judgment (Dkt. 16), DENIES the Commissioner's (Dkt. 18), and REMANDS this case for an award of benefits to Harper. A separate judgment will follow.

SO ORDERED.

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

Dated: July 24, 2015

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the attorneys and/or parties of record by electronic means or U.S. Mail on July 24, 2015.

s/Jane Johnson
Case Manager to
Honorable Laurie J. Michelson